

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DERRICK D. STEED,

No. C 12-3423 CW (PR)

Petitioner,

ORDER OF DISMISSAL WITH LEAVE
TO AMEND; DIRECTING CLERK OF
THE COURT TO PROVIDE PETITIONER
WITH CIVIL RIGHTS FORM AND
PRISONER'S IN FORMA PAUPERIS
APPLICATION

v.

T. KING, Associate Warden, et
al.,

Respondents.

This case was commenced when Petitioner filed a petition for a writ of habeas corpus in which he challenges his indeterminate placement in the Pelican Bay State Prison Security Housing Unit. He seeks declaratory and injunctive relief overturning his validation as a gang member and ordering his release from the SHU. Petitioner has also filed an application to proceed in forma pauperis (IFP).

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the

petition are vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

B. Petitioner's Claim

Petitioner alleges his Fourteenth Amendment rights were violated when he was validated as a gang member and placed in the SHU for an indeterminate period on the basis of insufficient and unreliable evidence. As noted, Petitioner seeks declaratory and injunctive relief that would overturn his gang validation and compel his release from the SHU.

Petitioner's claims are not cognizable in federal habeas corpus. "'Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or to particulars affecting its duration are the province of habeas corpus.'" Hill v. McDonough, 547 U.S. 573, 579 (2006) (quotation and citation omitted). "An inmate's challenge to the circumstances of his confinement, however, may be brought under § 1983." Id.

While the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought in habeas corpus, see Docken v. Chase, 393 F.3d 1024, 1028 (9th Cir. 2004), the Ninth Circuit has held that "habeas jurisdiction is absent, and a § 1983 action proper, where a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence." Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003). In particular, where,

1 as here, a petitioner's successful challenge to his administrative
2 segregation will not necessarily shorten his sentence, habeas
3 jurisdiction does not lie. See id.

4 Where a prisoner files a habeas petition attacking the
5 conditions of his confinement the district court may construe such
6 petition as a civil rights action under § 1983. See Wilwording v.
7 Swenson, 404 U.S. 249, 251 (1971). The Court will not do so here,
8 however, unless Petitioner affirmatively informs the Court that he
9 wants this case to proceed as a civil rights action. Because
10 § 1983 cases filed by prisoners are subject to certain statutory
11 requirements of which Petitioner should be aware before deciding to
12 proceed with a § 1983 action, the Court will not construe the
13 petition as a § 1983 action without Petitioner's consent. In
14 particular, § 1983 cases filed by prisoners are subject to a
15 requirement that the claims be administratively exhausted. See 42
16 U.S.C. § 1997e(a). Further, such cases are subject to a \$350.00
17 filing fee, rather than the \$5.00 dollar filing fee for habeas
18 cases, see 28 U.S.C. § 1914(a), and the fee must be paid even if
19 IFP status is granted, by way of deductions from the prisoner's
20 trust account until the full \$350.00 fee is paid. See 28 U.S.C.
21 § 1915(b). For these reasons, Petitioner might not seek to have
22 the instant action treated as a § 1983 case.

23 Accordingly, this case is DISMISSED with leave to amend for
24 Petitioner to allege a cause of action under § 1983. Should he
25 fail to do so, the case will be dismissed without prejudice.

26 CONCLUSION

27 For the foregoing reasons, the Court orders as follows:

- 28 1. This case is DISMISSED with leave to amend.

1 If Petitioner intends to allege a cause of action under 42
2 U.S.C. § 1983, he must do so no later than twenty-eight days from
3 the date of this Order. He must use the court's civil rights form,
4 write the case number for this action (C 12-3423 CW (PR)) on the
5 form and complete all sections of the form.

6 2. Petitioner has not filed an application to proceed IFP,
7 but has informed the Court that he intends to pay the \$5.00 habeas
8 corpus filing fee. As noted above, the filing fee for a civil
9 rights action is \$350.00.

10 Accordingly, before this case can proceed as a civil rights
11 action, Petitioner must, no later than twenty-eight days from the
12 date of this Order, pay the \$350.00 filing fee or file a completed
13 application for leave to proceed IFP.

14 3. The failure to file a completed civil rights form and to
15 pay the filing fee or file the requisite IFP documents within the
16 twenty-eight day deadline shall result in the dismissal of this
17 action without prejudice.

18 The Clerk of the Court shall send Petitioner a blank civil
19 rights form and the Court's prisoner IFP application form along
20 with a copy of this Order.

21 IT IS SO ORDERED.

22 Dated: 8/7/2012



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE